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OFFICIAL ANNOUNCEMENT.

EDMUND JONES, '95 L.

Edmund Jones, the former Librarian and Bursar of the Law Department of the University of Pennsylvania, died in Denver, Col., on August 18, 1904.

Mr. Jones was born in Philadelphia, March 9, 1874. His parents were descendants of the oldest and best-known families in Salem and Atlantic Counties, N. J., and several of his ancestors were judges of county courts in South Jersey.

Mr. Jones was educated in the public schools of Philadelphia, and was one of the public school commencement orators in 1889. He then read law with Hon. Lewis C. Cassidy, one of the last of the old school of great lawyers in Philadelphia. After Mr. Cassidy's death he studied with his partner, Pierce Archer.

Having been awarded a scholarship on competitive examination, Mr. Jones entered the Law Department of the University in the fall of 1892, graduating in June, 1895, with the degree of LL.D. He was elected Librarian of the Department for three years, succeeding Mr. S. Stanger Iszard. He then associated with Christopher Fallom, a member of the Bar. His advancement at the Bar was rapid, having had considerable practice in the Common Pleas, Orphans', and Criminal Courts, as also the Superior Court of Pennsylvania and the District Court of the United States. Failing health, however, obliged him to relinquish his practice and move to Colorado.

Mr. Jones was an elocutionist of some note. He was a graduate of the International School of Oratory and Elocution, and a private pupil of Professor George B. Hynson, who was at one time instructor in public speaking at the University.

During most of his spare time in the evening he filled engagements at concerts and entertainments. His services were much sought after, and were always freely given when the entertainment was for the benefit of a charity.

He was a member of the Grace M. E. Church of Philadelphia, where he took an active part in the work of the church, as well as the Sunday-school. He also took an active part in the affairs of the Young Men's Christian Association, of which he was a member for many years.

For several years Mr. Jones was the Treasurer of the Alumni Society of the Law Department of the University of Pennsylvania, as also the International School of Oratory.

On June 19, 1901, Mr. Jones was married to Emma Bonnin, of Germantown, whom he leaves surviving with one child.

LIABILITY OF EMPLOYER FOR INJURIES TO THIRD PARTIES CAUSED BY NEGLIGENCE OF INDEPENDENT CONTRACTOR IN RESPECT OF PREMISES UPON WHICH THE PUBLIC ARE INVITED UPON PAYMENT OF A FEE. *Texas State Fair* v. *Brittain,* 118 Fed. Rep. 713 (1902).—The general law that there is no liability upon the employer for the negligence of an independent contractor is well settled. The general principle may be stated thus: When an individual or corporation contracts with another individual or corporation exercising an independent employment for the latter to perform a work, not a nuisance *per se,* or in itself unlawful, or likely to cause harm to others, such work to be done according to the contractor's own methods, and not subject to the employer's control as to the manner in which it is to be done, but only as to the results to be obtained, the employer is not liable to a

third person for injury to such third person caused by the negligence of an independent contractor. See note to *Covington, etc., Bridge Co.* v. *Steinbrock,* 76 Am. St. Rep. 382, 385 (1899). Moreover, it may be said that whenever circumstances impose a *duty* upon the employer he cannot escape liability by employing an independent contractor. Thus in *Texas State Fair* v. *Brittain,* 118 Fed. Rep. 713 (1902), and *Texas State Fair* v. *Marti,* 69 S. W. Rep. 432 (1902),—both cases being founded upon the same cause of action,—the State Fair Association under a contract with Smith and Lucas, in return for a portion of the receipts, gave them the exclusive use of a part of the fair grounds for exhibition purposes, and advertised this exhibition as one of the attractions of the fair. The seating capacity provided by the State Fair proving inadequate, Smith and Lucas erected other seats. Owing to some negligence in their construction these last-mentioned seats fell, injuring Brittain, the defendant in error. The State Fair sought to avoid liability on the ground that Brittain's injuries, if caused by the negligence of anyone, were caused by the negligence of Smith and Lucas, who were independent contractors, and not its agents, and for whose acts it was in no way responsible. But the court held that no matter by whom the seats were erected, it was the duty of the State Fair to see that the same were in a reasonably safe condition before inviting the public to occupy them. "Under the circumstances," said the court, "it was the duty of the plaintiff (in error) to exercise ordinary care to prevent injury to those attending the entertainment. This is certainly true regarding the safety of the premises." 69 S. W. Rep. 433. To the same effect is the case of *Richmond, etc., Ry. Co.* v. *Moore,* 94 Va. 493 (1897). The rule laid down by Cooley is made the basis of the decision: ". . . . when one expressly or by implication invites others to come upon his premises, whether for business or any other purpose, it is his duty to be reasonably sure he is not inviting them into danger, and to that end he must exercise ordinary care and prudence to render the premises reasonably safe for the visit." (Cooley on "Torts," 2d Ed., p. 718.) Thus it will be observed that it is negligence—the failure to perform a duty—that renders the State Fair liable. And, indeed, in all cases of this kind, if the injury be caused by the independent contractor's negligence, the responsibility for this negligence falls upon the employer, who is himself negligent, either for permitting an act to be done which may result in injury unless proper precautions are taken and failing to take such precautions, or for accepting work done in a defective manner without ascertaining whether it is reasonably fit for the purpose for which it is to be used.

In *Francis* v. *Cockrell,* L. R. (5 Q. B.) 501 (1870), where defendant sold to plaintiff a seat on a grand stand for the purpose of viewing a steeple-chase, and owing to the negligent construction of the stand it collapsed and injured plaintiff, it was said that there was an implied contract on the part of the defendant that the stand was reasonably fit for the purpose for which it was to be used. The court said: "One who lets for hire, or engages for the supply of any article or thing, whether it be a carriage to be ridden in, or a bridge to be passed over (*Grote* v. *Chester and Holyhead Ry. Co.,* 2 Exch. 251, 1848), or a stand from which to view a steeple-chase, or a place to be sat in by anybody who is to witness a spectacle for a pecuniary consideration, does warrant, and does impliedly contract, that the article or thing is reasonably fit for the purpose to which it is to be applied, subject, however, to this important qualification: he does not contract against any unseen or unknown defect which cannot be discovered, or which may be said to be undiscoverable by any ordinary or reasonable means of inquiry or examination (*Redhead* v. *Midland Ry. Co.,* 20 L. T. Rep. (N. S.) 628, 1867), per Kelly, C. B. Yet even in this case the idea that there was a duty incumbent upon the employer was present, for Martin, B., points out that there existed between the plaintiff and the defendant "one of those implied contracts which, in point of fact, is the same as a duty." The duty was personal on the defendant when he received the admission fee to provide that the stand was ordinarily fit and proper for the purpose for which it was to be used. So also in *Pike* v. *The Polytechnic Institution,* 1 F. and F. 712 (1859).

In general it may be said that persons managing an exhibition are under just the same obligation with respect to making their premises safe as are other owners of real property. The proprietor of a hall to which the public are invited is bound to use ordinary care and diligence to put and keep the hall in a reasonably safe condition for persons attending in pursuance of such invitation, and if he neglects his duty in this respect so that the hall is unsafe, his knowledge or ignorance of the defect is immaterial: *Currier* v. *Boston Music Hall,* 135 Mass. 413 (1883). If an owner or occupier of land directly or impliedly induces persons to come upon his premises, he thereby assumes an obligation that the premises are in a reasonably safe condition, so that persons there by his invitation shall not be injured by them or in their use for the purpose for which the invitation was extended: *Hart* v. *Washington Park Club,* 157 Ill. 9 (1895). "A person erecting and maintaining a hall for exhibition purposes must use reasonable care in the construction, maintenance, and management of it, having regard to the character of the exhibitions to be given and the customary con-

duct of the spectators who witness them:" *Schofield* v. *Wood*, 170 Mass. 415 (1898). But on the lease of a building for exhibition purposes, the gallery being designed only for a limited number of spectators, there is no implied warranty that they shall be safe from a turbulent crowd. It is safe only for ordinary uses. "If any responsibility attaches to the defendant," said the court, "it cannot be based upon any contract obligation, but must rest entirely upon its *delictum*:" *Edwards* v. *N. Y. and Harlem Ry. Co.*, 98 N. Y. 245, 248 (1885).

The doctrine that when one invites another upon his premises he impliedly warrants that they are reasonably safe was followed in *Fox* v. *Buffalo Park*, 21 N. Y. App. Div. 321 (1897), where it was said: "While it is undoubtedly true in ordinary cases in the leasing of buildings that there is no implied warranty on the part of the lessor that the buildings are fit and safe for the purposes for which they are leased, the rule is different in regard to buildings and structures in which public entertainments and exhibitions are designed to be given and for admissions to which the lessors directly or indirectly receive compensation. In such cases the lessors or owners of the buildings or structures hold out to the public that the structures are reasonably safe for the purposes for which they are let or used, and impliedly undertake that due care has been exercised in the erection of the buildings:" *Francis* v. *Cockrell*, L. R. (5 Q. B.) 501 (1870); *Swords* v. *Edgar*, 59 N. Y. 28 (1874); *Camp* v. *Wood*, 76 N. Y. 92 (1879); *Beck* v. *Carter*, 68 N. Y. 283 (1877); *Grote* v. *C. and H. R. Co.*, 2 Exch. 251 (1848); *Campbell* v. *Portland Sugar Co.*, 62 Me. 552 (1871); *Wendell* v. *Baxter*, 12 Gray, 494 (1859).

Having stated the duties of the employer with respect to the condition of his premises, we have now to inquire when he has been held liable for injuries to a person caused by the negligence of an independent contractor who is conducting an exhibition on the employer's grounds. One who employs an independent contractor to make and conduct an exhibition is not relieved from responsibility to persons receiving injury if the exhibition is of a kind which will probably cause injury unless due precautions are taken to guard against harm: *Thompson* v. *Lowell, etc., Street Ry. Co.*, 170 Mass. 577 (1898); *Curtis* v. *Kiley*, 153 Mass. 123 (1891); *Richmond, etc., Ry. Co.* v. *Moore*, 94 Va. 493 (1897); *Hanver* v. *Whalen*, 49 Ohio St. 209 (1892); *Bower* v. *Peate*, 1 Q. B. D. 32. In *Richmond, etc., Ry. Co.* v. *Moore* (*supra*) it is said: "It is immaterial whether the person giving the exhibition is an independent contractor or not. The gist of the action is the negligent failure of the defendant to use proper care to protect a visitor from a danger on its premises while there at the defendant's invita-

tion." So, also, in *Conradt* v. *Clauve,* 93 Ind. 476 (1883), and *Sebeck* v. *Plattdeutsche Volkfest Verein,* 64 N. J. L. 624 (1900). But in *Smith* v. *Benick,* 87 Md. 610 (1898), a different view is taken. It is there said that "when an owner or occupier of premises employs a competent person to do work which of itself is not a nuisance, or of which the necessary or probable consequence would not be to injure others, the employer is not responsible for such negligence as is entirely collateral to, and not a probable consequence of, the work contracted for," citing *Deford* v. *State,* 31 Md. 179; *Suburban Co.* v. *Moores,* 80 Md. 348; *Randleson* v. *Murray,* 8 Adol. and Ell. 109; *Davis* v. *Congregational Society,* 129 Mass. 367; *Pickard* v. *Smith,* 10 C. B. (N. S.) 468. And in *Deyo* v. *Kingston Consolidated Ry. Co.,* 88 N. Y. Supp. 487 (1904), where the defendant invited the public to its park to witness an exhibition given by an independent contractor, and the plaintiff was injured by the negligent discharge of a rocket by one of the contractor's servants, it was held that the defendant was not liable, as he could not reasonably have been expected to foresee the independent contractor's negligence.

In conclusion, it may be said that apparently in all cases in which the employer has been held liable for the negligence of an independent contractor in respect of premises upon which the public are invited, there has been a duty cast upon the defendant by reason of the invitation to see that the premises are reasonably safe for the purposes for which the invitation has been extended.

F. H. S.